

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

USOR SITE PAP GROUP,	§	
	§	CIVIL ACTION NO.:
Plaintiff	§	4:14-CV-02441
	§	
vs.	§	
	§	
SUNDANCE FUELS LTD.,	§	Jury Trial Requested
ET AL,	§	
	§	
Defendant	§	

DEFENDANT SUNDANCE FUELS LTD'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE:

SUNDANCE FUELS LTD. ("SUNDANCE") files this Original Answer to the Complaint filed by Plaintiff USOR Site PAP Group ("Plaintiff"). SUNDANCE demands a trial by jury.

I.
ANSWER AND DENIALS

SUNDANCE will respond to the numbered paragraphs in Plaintiff's Complaint ("Complaint").

1. *PARAGRAPHS 1-3*

Paragraphs 1-3 assert allegations that are of a nature that require no response. FRCP 8 (b).

2. *PARAGRAPH 4*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to the truth of any of the allegations in Paragraph

3. *PARAGRAPH 5*

SUNDANCE Admits that in the unlikely event Plaintiff has a valid claim this Court would have jurisdiction and venue would be proper in Harris County Texas.

4. *PARAGRAPHS 5-30*

SUNDANCE denies that it is liable to any member of the USOR Site PAP Group for the costs and/or recovery alleged in Paragraph 29. SUNDANCE does not have sufficient information to either admit or deny the truth of the remaining allegations.

5. *PARAGRAPH 31*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to the truth of any of the allegations in Paragraph 5

6. *PARAGRAPHS 32-2376*

SUNDANCE is without sufficient information to admit the allegations by Plaintiff against all other Defendants and therefore those allegations are denied. As to paragraph 171 SUNDANCE has not reviewed the records identified and cannot admit or deny the accuracy of the records. Regardless the records will speak for themselves. With respect to Paragraphs 1960 and 1961 SUNDANCE admits that SUNDANCE received a letter but cannot admit or deny the date or contents. SUNDANCE has requested a second copy of the Letter and will supplement. SUNDANCE admits it has not paid any costs. SUNDANCE denies it has refused to cooperate.

7. *PARAGRAPHS 2377-2388*

SUNDANCE asserts that the allegations are of a nature that require no response. FRCP 8(b).

8. *PARAGRAPH 2389*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to

the truth of any of the allegations in this Paragraph. SUNDANCE denies that it was an "arranger or generator" of materials containing the hazardous substances in question. SUNDANCE denies it was a "transporter of hazardous substances who selected the USOR Site for the disposal of such hazardous substances, and who did dispose of such hazardous substances at the Site." All other allegations are denied.

9. *PARAGRAPH 2390*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to the truth of any allegations in this Paragraph

10. *PARAGRAPHS 2391-2392*

SUNDANCE denies Plaintiff has suffered any damages as a result of any conduct of SUNDANCE and demands proof of damages.

11. *PARAGRAPH 2393*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to the truth of any assertions regarding liabilities of any other Defendant. SUNDANCE denies it is liable to Plaintiff. SUNDANCE denies Plaintiff is entitled to recover for "response costs," judgment interest, costs of court, attorneys' fees, or any other relief potentially available to Plaintiff.

12. *PARAGRAPHS 2394-2395*

The allegations made in these paragraphs are of a nature that requires no response. FRCP 8(b).

13. *PARAGRAPH 2396*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to the truth of any of these allegations FRCP 8 (b).

14. *PARAGRAPHS 2397 - 2399*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to the truth of any of these allegations. SUNDANCE denies Plaintiff is entitled to recover for contribution, judgment interest, costs of court, attorneys' fees, or any other relief potentially available to Plaintiff.

15. *PARAGRAPHS 2400-2402*

These Paragraphs do not require a response FRCP 8(b).

16. *PARAGRAPH 2403-2404*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to the truth of any of the allegations regarding liabilities, if any, of any Defendant.

17. *PARAGRAPHS 2405-2406*

SUNDANCE believes that the allegations are of a nature that require no response. FRCP 8(b).

18. *PARAGRAPH 2407*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to the truth of any of the allegations made in this paragraph.

19. *PARAGRAPHS 2408-2410*

SUNDANCE believes no Response is required. FRCP 8 (b).

20. *PARAGRAPH 2411*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to truth of these allegations.

21. *PARAGRAPH 2412*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to

truth of these allegations.

22. *PARAGRAPH 2413*

SUNDANCE believes no Response is required. FRCP 8 (b).

23. *PARAGRAPHS 2414- 2418*

SUNDANCE is without sufficient knowledge or information to formulate a belief as to truth of these allegations.

II.
AFFIRMATIVE DEFENSES

24. Plaintiff's claims against SUNDANCE fail pursuant to CERCLA and TSWDA. SUNDANCE did not transport "hazardous" material to the sites in questions. Alternately, such substances, if any, were not "hazardous" materials or substances or were excluded petroleum products, and/or are not otherwise substances within the purview of CERCLA or TSWDA.

25. Alternatively, SUNDANCE acted with due care in accordance with all applicable statutory, regulatory, and/or industry requirements and standards.

26. Alternatively, SUNDANCE says any alleged act by SUNDANCE is authorized by statute, ordinance, regulation, or rule of a state, regional, or local agency or government, or by a permit, license, or similar authorization from such entity or authority.

27. Alternatively, any costs incurred by Plaintiff resulted from an independent, intervening, and/or supervening cause over which SUNDANCE had no control.

28. Alternatively any costs incurred by Plaintiff are caused solely by the acts or omissions of a third party or parties with whom SUNDANCE had no control.

29. Alternatively any costs alleged in Plaintiff's Complaint, is de minimus and should be excluded from such claim and SUNDANCE dismissed.

30. Alternatively, Plaintiff's claims are barred to the extent Plaintiff seeks to recover costs

for actions that exceed applicable regulatory requirements, or are otherwise excessive or unnecessary, and/or are inconsistent with the National Contingency Plan.

31. Alternatively Plaintiff failed to mitigate its damages.

32. Alternatively Plaintiffs claims if any and recovery of damages if any should be reduced to the extent Plaintiff receives grants, funding, or forgiveness of indebtedness from any governmental authority, settlement funds, or other such payments from any third parties

33. Alternatively Plaintiff's claims pursuant to the TSWDA are barred to the extent such claims are preempted by federal law.

34. Alternatively any attempt by Plaintiff to impose joint and several liability is inappropriate under the circumstances and in the context of the claims asserted in Plaintiff's Complaint. SUNDANCE seeks equal apportionment as to all claims against all Defendants.

35. Alternatively in the unlikely event SUNDANCE is held responsible for any costs, SUNDANCE requests that the Court allocate the response costs amount to all responsible parties, as provided by Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

36. Alternatively, Plaintiff's claims are barred by limitations, statutes of repose, or the equitable doctrine of laches.

37. Alternatively in the unlikely event SUNDANCE is found accountable SUNDANCE would respectfully request all available credits and/or offsets available by law.

38. Alternatively in the unlikely event SUNDANCE is found accountable, SUNDANCE asserts all rights and entitlements to indemnity and contribution against any party in this case available at law.

III. JURY DEMAND

39. SUNDANCE demands a trial by Jury. A jury fee is being paid.

IV.
PRAYER

40. SUNDANCE requests that upon Trial all claims against SUNDANCE be dismissed and SUNDANCE be awarded its costs and attorney fees and have such other and further relief to which it may be entitled.

RESPECTFULLY SUBMITTED

PATTERSON, BOYD & LOWERY, P.C.

BY: /s/ William C. Boyd
WILLIAM C. BOYD
T/B/A 02779000
Email: wboyd@pattersonboyd.com
S. SCOTT BOYD
T/B/A 24026909
Email: ssboyd@pattersonboyd.com
2101 Louisiana St.
Houston, Texas 77002
Phone: 713-222-0351
Fax: 713-759-0642

Attorneys for Defendant,
SUNDANCE FUELS LTD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Sundance Fuels Ltd's Answer to Plaintiff's Complaint has been forwarded to the attorneys of record by CM/ECF service on this 5th day of November, 2015:

/s/ S. Scott Boyd
S. SCOTT BOYD